

REMARKS

The Office has required restriction in the present application as follows:

Group I: Claims 1-36, drawn to an electrospinning process;

Group II: Claims 37-40, drawn to hyaluronan fibers.

Applicants have elected, with traverse, the claims of Group I, claims 1-36, for examination in this application.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP §803.

Applicants respectfully traverse the requirement for restriction on the grounds that the Office has not provided adequate reasons and/or examples to support a conclusion of patentable distinctness between the identified groups.

The Examiner has characterized groups I and II as being related as process of making and product made. Citing MPEP 806.05(f), the Examiner notes that inventions in this relation are distinct if it can be shown that (1) the process as claimed can be used to make another and materially different product or (2) the product as claimed can be made by another and materially different process. The Examiner further states in the present case, the product as claimed can be made by a materially different process such as by melt spinning, dry spinning or wet spinning the fibers, or by first extruding a film then longitudinally slitting the film to form fibers. However, due to the unique properties of hyaluronan, as noted in the specification, the Examiner's assertion that the hyaluronan fibers having the required diameter of from 10 to 1000 nm could be made by some other method is just that, an assertion having no factual evidence to support it. As such, the Office has not met its burden in showing the groups to be patentably distinct and the restriction should be withdrawn

Moreover, MPEP §803 states:

"If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully submitted,

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